



TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	09/477,880
Filing Date	January 5 th , 2000
Inventor(s)	Donald E. BLAHUT et. al.
Group Art Unit	2154
Examiner Name	Larry D. Donaghue
Attorney Docket Number	129250-002093/US/COA

ENCLOSURES (check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Assignment Papers (for an Application)	<input type="checkbox"/> After Allowance Communication to Group
<input checked="" type="checkbox"/> Fee Attached	<input type="checkbox"/> Letter to the Official Draftsperson and _____ Sheets of Formal Drawing(s)	<input type="checkbox"/> LETTER SUBMITTING APPEAL BRIEF AND APPEAL BRIEF (w/clean version of pending claims)
<input type="checkbox"/> Amendment	<input type="checkbox"/> Licensing-related Papers	<input checked="" type="checkbox"/> Appeal Communication to Group (Notice of Appeal, Appeal Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Change of Correspondence Address and Revocation/POA	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	Check # 1154 for \$500
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Response to Missing Parts/ Incomplete Application		
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		
	Remarks	

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC	Attorney Name John E. Curtin	Reg. No. 37,602
Signature			
Date	August 30, 2006		

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

FEE TRANSMITTAL for FY 2006

Effective 10/01/2004. Patent fees are subject to annual revision.

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 500.00

Complete if Known

Application Number	09/477,880
Filing Date	January 5th, 2000
First Named Inventor	Donald E. Blahut
Examiner Name	Larry D. Donaghue
Art Unit	2154
Attorney Docket No.	129250-002093/US

METHOD OF PAYMENT (check all that apply)

Check Credit card Money Other None
 Order

Deposit Account:

Deposit Account Number	50-3777
------------------------	---------

Deposit Account Name	CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC
----------------------	---

The Director is authorized to: (check all that apply)

Charge fee(s) indicated below Credit any overpayments
 Charge any additional fee(s) during the pendency of this application
 Charge fee(s) indicated below, except for the filing fee
 to the above-identified deposit account.

FEES CALCULATION**1. BASIC FILING FEE**

Large Entity	Small Entity	Fee Description	Fee Paid
Fee Code (\$)	Fee Code (\$)	Fee Code (\$)	
1011 300	2011 150	Utility filing fee	
1012 200	2012 100	Design filing fee	
1013 200	2013 100	Plant filing fee	
1014 300	2014 150	Reissue filing fee	
1005 200	2005 100	Provisional filing fee	
SUBTOTAL (1)			(\$ 0)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

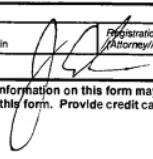
Total Claims	-20 **	=	Extra Claims	Fee from below	Fee Paid
Independent Claims	-3 **	=	8 prior paid for	X	0
Multiple Dependent		=	4 prior paid for	X	0
		=			0

Large Entity	Small Entity	Fee Description
Fee Code (\$)	Fee Code (\$)	Fee Code (\$)
1202 50	2202 25	Claims in excess of 20
1201 200	2201 100	Independent claims in excess of 3
1203 360	2203 180	Multipile dependent claim, if not paid over original patent
1204 200	2204 100	" Reissue independent claims over original patent
1205 50	2205 25	" Reissue claims in excess of 20 and over original patent
SUBTOTAL (2)		(\$ 0)

FEES CALCULATION (continued)**3. ADDITIONAL FEES**

Large Entity	Small Entity	Fee Description	Fee Paid
Fee Code (\$)	Fee Code (\$)	Fee Code (\$)	
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 120	2251 60	Extension for reply within first month	
1252 450	2252 225	Extension for reply within second month	
1253 1020	2253 510	Extension for reply within third month	
1254 1,590	2254 795	Extension for reply within fourth month	
1255 2,160	2255 1,080	Extension for reply within fifth month	
1401 500	2401 250	Notice of Appeal	
1402 500	2402 250	Filing a brief in support of an appeal	500
1403 1000	2403 500	Request for oral hearing	
1452 500	2452 250	Petition to revive - unavoidable	
1453 1,500	2453 750	Petition to revive - unintentional	
1501 1,400	2501 700	Utility issue fee (or reissue)	
1502 800	2502 400	Design issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17 (q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patient assignment per property (times number of properties)	
1809 790	2809 395	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810 790	2810 395	For each additional invention to be examined (37 CFR § 1.129(b))	
1801 790	2801 395	Request for Continued Examination (RCE)	
Other fee (specify)			
*Reduced by Basic Filing Fee Paid		SUBTOTAL (3)	(\$ 500)
4. RESEARCH/EXAMINATION FEES			
1111 500	2111 250	Utility Search Fee	
1112 100	2112 50	Design Search Fee	
1113 300	2113 150	Plant Search Fee	
1114 500	2114 250	Reissue Search Fee	
1311 200	2311 100	Utility Examination Fee	
1312 130	2312 65	Design Examination Fee	
1313 160	2313 80	Plant Examination Fee	
1314 600	2314 300	Reissue Examination Fee	
SUBTOTAL (4)		(\$ 0)	

**or number previously paid, if greater; For Reissues, see above

SUBMITTED BY		Complete if applicable	
Name (Print/Type)	John E. Curtin	Registration No. (Attorney/Agent)	37,602
Signature		Telephone	(703) 266-3330
		Date	August 30, 2006

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.



IN THE U.S. PATENT AND TRADEMARK OFFICE

Application No.: 09/477,880

Filing Date: January 5, 2000

Applicant: Donald E. BLAHUT et al.

Group Art Unit: 2154

Confirmation No.: 9862

Examiner: Larry D. Donaghue

Title: INTERNET PROTOCOL BASED NETWORK ARCHITECTURE
FOR CABLE TELEVISION ACCESS WITH SWITCHED
FALLBACK

Attorney Docket: 129250-002093/US/COA

APPELLANTS' BRIEF ON APPEAL

MAIL STOP APPEAL BRIEF - PATENTS

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

August 30, 2006

08/31/2006 JADDO1 00000002 09477888
01 FC:1402 500.00 OP

APPELLANT'S BRIEF ON APPEAL
U.S. Application No.: 09/477,880
Atty. Docket: 129250-002093/US



TABLE OF CONTENTS

	<u>Page</u>
APPELLANTS' BRIEF ON APPEAL	1
I. REAL PARTY IN INTEREST	1
II. RELATED APPEALS AND INTERFERENCES.....	1
III. EVIDENCE SUBMITTED UNDER 37 CFR 1.130, 1.131, OR 1.132.....	1
IV. DECISIONS RENDERED BY A COURT OR THE BOARD IN RELATED APPEALS AND INTERFERENCES.....	1
V. STATUS OF CLAIMS	2
VI. STATUS OF AMENDMENTS	2
VII. SUMMARY OF CLAIMED SUBJECT MATTER.....	3
(i) Overview of the Subject Matter of the Independent Claims.....	3
(ii) The Remainder of the Specification Also Supports the Claims.....	9
VIII. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL.....	9
IX. ARGUMENTS.....	10
X. CONCLUSION.....	13
XI. EVIDENCE APPENDIX.....	14
XII. RELATED PROCEEDING APPENDIX.....	14
APPENDIX A - Claims Appendix	
APPENDIX B - Terminal Disclaimer	

APPELLANT'S BRIEF ON APPEAL
U.S. Application No.: 09/477,880
Atty. Docket: 129250-002093/US



APPELLANTS' BRIEF ON APPEAL

I. REAL PARTY IN INTEREST:

The real party in interest in this appeal is Lucent Technologies Inc.

Assignment of the application was submitted to the U.S. Patent and Trademark Office and recorded at Reel 9163, Frame 0564.

II. RELATED APPEALS AND INTERFERENCES:

There are no known appeals or interferences that will affect, be directly affected by, or have a bearing on the Board's decision in this Appeal.

III. EVIDENCE SUBMITTED UNDER CFR 1.130, 1.131, OR 1.132:

A terminal disclaimer has been filed in this application in accordance with 37 CFR 1.130(b) (copy attached as Appendix B) to overcome non-statutory double patenting rejections based on U.S. Patent No. 6,065,061 ('061 Patent) which is commonly owned by Lucent Technologies, Inc.

IV. DECISIONS RENDERED BY THE COURT OR THE BOARD IN RELATED APPEALS AND INTERFERENCES:

None are known by the Appellants' present attorneys at this time. If the Appellants' attorneys learn of any such decisions rendered in the '061 Patent they will promptly file an amended brief and bring any such decisions to the attention of the Examiner and members of the Board.

V. STATUS OF CLAIMS:

Claims 1, 4, 7-10, 12-18, 20, 22-25 and 27-32 are pending in the application. Claims 1, 4, 7, 12, 14, 16-18, 20, 22, 27, 29, 31 and 32 are written in independent form.

Claims 7-10 and 22-25 have been allowed. The Appellants reserve their right to subsequently raise any issues regarding allowed claims 7-10 and 22-25 should it be necessary in this or any other proceeding.

Claims 1, 4, 12-19, 20 and 27-32 have been finally rejected under 35 U.S.C. §102(e)(claim 19 has since been deleted). Claims 2, 5, 19 and 21 were finally rejected under 35 U.S.C. §103(a). Subsequently, claims 2, 5, 19 and 21 were cancelled in the AAF entered by the Examiner, their subject matter having been placed into independent claims 1, 4, 12, 14, 16-18, 20, 27, 29, 31 and 32.

Claims 1, 4, 12-18, 20 and 27-32 are being appealed.

VI. STATUS OF AMENDMENTS:

An Amendment After Final ("AAF") was filed on June 2, 2006. In an Advisory Action mailed August 7, 2006 ("Advisory") the Examiner stated that the AAF was considered; however, the AAF did not place the application in condition for allowance. Appellants note that because the Advisory was mailed after the 3 month shortened statutory time period which expired on July 5th, 2006 any extension of time fees associated with this appeal should be calculated from the date of the Advisory, namely, from August 7, 2006.

VII. SUMMARY OF CLAIMED SUBJECT MATTER:

(i) Overview of the Subject Matter of the Independent Claims BeingAppealed

In general, the present invention is directed at methods and devices for providing Internet service to an "endpoint" using an alternative/secondary (collectively "secondary"), Internet Protocol (IP) address.

(a) Claim 1

More specifically, independent claim 1 is directed to:

- 1. A method for use in providing Internet service to an endpoint, the method comprising the steps of:
specifying routing information for an endpoint, wherein the routing information specifies primary and alternative Internet Protocol (IP) addresses; and
communicating data to the endpoint using the specified primary IP address except during periods of service interruption in which one of the alternative IP addresses are used by
establishing an IP tunnel to the endpoint using one of the alternative IP addresses.**

(see, for example, the Specification p. 6, line 5 to page 7, line 1).

(b) Claim 4

Similarly, independent claim 4 is directed to:

- 4. A method for use in providing Internet service to an endpoint via a primary communications channel, the method comprising the steps of:
storing a routing table comprising an first Internet Protocol (IP) address associated with routing data to an endpoint via the primary**

communications channel and a second IP address associated with routing data to the endpoint over a secondary communications channel; and routing data to the endpoint as a function of the routing table such that during periods of service interruption on the primary communications channel data is routed to the endpoint via the secondary communications channel by establishing an IP tunnel to the endpoint using the second IP address, whereas data is routed to the endpoint via the primary communications channel otherwise.

(see, for example, the Specification p. 6, line 5 to page 7, line 1)

(c) Claim 12

Independent claim 12 is also directed at an:

12. Apparatus for use in providing Internet service to an endpoint, the apparatus comprising:

a device for (a) specifying routing information for an endpoint, wherein the routing information specifies primary and alternative Internet Protocol (IP) addresses, and (b) communicating data to the endpoint using the specified primary IP address except during periods of service interruption in which one of the alternative IP addresses are used by (c) establishing an IP tunnel to the endpoint using an alternative IP address.

(see, for example, the Specification p. 6, line 5 to page 7, line 1)

(d) Claim 14

Independent claim 14 is directed at an:

14. Apparatus for use in providing Internet service to an endpoint, the apparatus comprising:

a device for routing data to the endpoint as a function of a routing table stored therein such that during periods of service interruption on a primary communications channel associated with a primary IP address data is routed to the endpoint via a secondary communications channel associated with a secondary IP address by establishing an IP tunnel to the endpoint using the secondary IP address, whereas data is routed to the endpoint via the primary communications channel otherwise.

(see, for example, the Specification p. 6, line 5 to page 7, line 1)

(e) Claim 16

Independent claim 16 is directed at:

16. A system for use in providing Internet service, the system comprising:

a cable head-end router for providing Internet Protocol (IP) packets intended for subsequent conveyance over a primary channel; and
a cable modem data termination system responsive to the provided IP packets for routing the IP packets to an endpoint as a function of a routing table stored therein such that during periods of service interruption on the primary communications channel the IP packets are routed to the endpoint via a secondary communications channel associated with a secondary IP address by establishing an IP tunnel to the endpoint using the secondary IP address, whereas the IP packets are routed to the endpoint via the primary communications channel associated with a primary IP address otherwise.

(see, for example, the Specification p. 6, line 5 to page 7, line 1)

(f) Claim 17

Independent claim 17 is directed at:

17. A system for use in providing Internet service, the system comprising:

a cable head-end router for providing Internet Protocol (IP) packets that include a destination field having a value associated with a first IP address; and

a cable modem data termination system responsive to the provided IP packets for communicating the IP packets to the endpoint using the first IP address except during periods of service interruption in which an alternative IP address is used by establishing an IP tunnel to the endpoint using the alternative IP address.

(see, for example, the Specification p.5, lines 6-11 and p. 6, line 5 to page 7, line 1)

(g) Claim 18

Independent claim 18 is directed at:

18. A method for use in providing Internet service to an endpoint, the method comprising the steps of:

specifying routing information for an endpoint, wherein the routing information specifies primary and alternative Internet Protocol (IP) addresses; and

communicating data to the endpoint using the specified primary IP address over a first cable-based communications channel except during periods of service interruption in which one of the alternative IP addresses are used for communicating over a second non-cable-based communications channel by establishing an IP tunnel to the endpoint using one of the alternative IP addresses over the non-cable channel.

(see, for example, the Specification p. 6, line 5 to page 7, line 1)

(h) Claim 20

Independent claim 20 is directed at:

20. A method for use in providing Internet service to an endpoint via a primary communications channel, the method comprising the steps of:

storing a routing table comprising an first-Internet Protocol (IP) address associated with routing data to an endpoint via the primary communications channel and a second IP address associated with routing data to the endpoint over a secondary communications channel; and

routing data to the endpoint as a function of the routing table such that during periods of service interruption on the primary communications channel data is routed to the endpoint via the secondary communications channel by establishing an IP tunnel to the endpoint using the second IP address, whereas data is routed to the endpoint via the primary communications channel otherwise and wherein the primary communications channel and the secondary communications channel are supported by physically different communications mediums.

(see, for example, the Specification p. 6, line 5 to page 7, line 1)

(i) Claim 27

Independent claim 27 is directed at an:

27. Apparatus for use in providing Internet service to an endpoint, the apparatus comprising:

a device for (a) specifying routing information for an endpoint, wherein the routing information specifies primary and alternative Internet Protocol (IP) addresses, and (b) communicating data to the endpoint using the specified primary IP address over a first cable-based channel except during periods of service interruption in which one of the alternative IP addresses are used for communicating data over a second non-cable-based communications channel by (c) establishing an IP tunnel to the endpoint using an alternative IP address over the non-cable channel.

(see, for example, the Specification p. 6, line 5 to page 7, line 1)

(j) Claim 29

Independent claim 29 is directed at an:

29. Apparatus for use in providing Internet service to an endpoint, the apparatus comprising:

a device for routing data to the endpoint as a function of a routing table stored therein such that during periods of service interruption on a primary communications channel associated with a primary IP address data is routed to the endpoint via a secondary communications channel associated with a secondary IP address by establishing an IP tunnel to the endpoint using the secondary IP address, whereas data is routed to the endpoint via the primary communications channel otherwise and wherein the primary communications channel is physically different from the secondary communications channel.

(see, for example, the Specification p. 6, line 5 to page 7, line 1)

(k) Claim 31

Independent claim 31 is directed at:

31. A system for use in providing Internet service, the system comprising:

a cable head-end router for providing Internet Protocol (IP) packets intended for subsequent conveyance over a primary cable channel; and
a cable modem data termination system responsive to the provided IP packets for routing the IP packets to an endpoint as a function of a routing table stored therein such that during periods of service interruption on the primary cable channel the IP packets are routed to the endpoint via a secondary non-cable communications channel associated with a secondary IP address by establishing an IP tunnel to the endpoint using the secondary IP address, whereas the IP packets are routed to the endpoint via the primary cable channel associated with a primary IP address otherwise.

(see, for example, the Specification p.5, lines 6-11 and p. 6, line 5 to page 7, line 1)

(m) Claim 32

Independent claim 32 is directed at:

32. A system for use in providing Internet service, the system comprising:

a cable head-end router for providing Internet Protocol (IP) packets that include a destination field having a value associated with a first IP address; and

a cable modem data termination system responsive to the provided IP packets for communicating the IP packets to the endpoint over a cable-based communications channel using the first IP address except during periods of service interruption in which an alternative IP address is used for communicating the IP packets to the endpoint over a non-cable-based communications channel by establishing an IP tunnel to the endpoint using an alternative IP address over the non-cable channel.

(see, for example, the Specification p.5, lines 6-11 and p. 6, line 5 to page 7, line 1)

In order to make the overview set forth above concise, and thus useful to the members of the Board, the Appellants note that the disclosure that has been included, or referred to, above represents only a portion of the total disclosure set forth in the Specification that supports the independent claims.

(ii) The Remainder of the Specification Also Supports the Claims

The Appellants further note that there may be additional disclosure in the Specification that also supports the independent and dependent claims. Further, by presenting the disclosure above the Appellants do not represent that this is the only evidence that supports the independent claims nor do Appellants necessarily represent that this disclosure can be used to fully interpret the claims of the present invention. Instead, this disclosure is an overview of the claimed subject matter.

VIII. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL:

Appellants seek the Board's review and reversal of the Examiner's: (1) rejection of claims 1, 4, 12-18, 20 and 27-32 under 35 U.S.C. §102(e); and (2) rejection of claims 2, 5, 19 and 21 under 35 U.S.C. §103(a). Because dependent claims 2, 5, 19 and 21 have been cancelled and their subject matter placed into independent claims 1, 4, 12, 14, 16-18, 20, 27, 29, 31 and 32 the §103(a) rejections are now, in effect, applicable to the independent claims.

IX. ARGUMENTS:

A.) The Section 102(e) Rejections

Claims 1, 4, 12-19, 20 and 27-32 were rejected under 35 U.S.C. §102(e) as being anticipated by Hrastar et al., U.S. Patent No. 6,286,058 ("Hrastar"). Appellants respectfully disagree for at least the following reasons.

Each of the claims of the present application includes the feature of establishing an IP tunnel to an endpoint using an alternative or secondary IP address. Appellants note the Examiner's acknowledgement in the Final Office Action that Hrastar does not disclose the establishment of such an IP tunnel to an endpoint using an alternative/secondary IP address.

Because Hrastar does not disclose each element of the claims of the present invention Hrastar cannot anticipate these claims.

Accordingly, Appellants respectfully request that the members of the Board reverse the decision of the Examiner and allow claims 1, 4, 12-18, 20 and 27-32.

B.) The Section 103 Rejections

Claims 2, 5, 19 and 21 were rejected under 35 U.S.C. §103(a) as being unpatentable over Hrastar in view Nordman, U.S. Patent No. 6,061,346 ("Nordman"). Appellants respectfully disagree for at least the following reasons. Before proceeding, the Appellants again note that these claims have been

cancelled and their subject matter placed into the independent claims mentioned above. Accordingly, it is to the independent claims that the following remarks are directed.

(i) There is No Motivation To Combine Hrastar and Nordman

The Appellants respectfully submit that one of ordinary skill in the art, upon reading the disclosures of Hrastar and Nordman, would not combine the two because there is no motivation, suggestion or teaching of a desirability of making such a combination. More specifically, the Examiner is relying on the combination of Hrastar and Nordham as suggesting the claimed methods of providing Internet service to an endpoint, including the step of establishing an IP tunnel to an endpoint using a secondary IP address.

Taking the last basis first, Hrastar does not explicitly disclose that its CATV packet rerouting methods can use, could use, or need to use the purported tunneled, secondary IP addresses disclosed in Nordham. Hrastar either uses a CATV address or a primary IP address; there is no suggestion in Hrastar that, if its CATV or primary IP address is not available, it can use a tunneled, secondary IP address.

Nor does Hrastar imply that it can use, could use, or need to use the purported tunneled, secondary IP addresses in Nordham; thus, there is no suggestion or motivation to combine the two.

Further, the Appellants respectfully remind the Examiner that the fact that the Examiner may somehow combine the references does not render the

subject matter of the claims obvious unless one or more of the references suggest the desirability of such a combination. Absent any mention whatsoever in Hrastar of a need to use tunneled, secondary IP addresses, the Appellants respectfully submit that there is no motivation provided by Hrastar that would cause one of ordinary skill in the art to combine it with Nordham (or vice-versa) as proposed by the Examiner.

(ii) The Combination of Hrastar and Nordman is Impermissible

The Appellants respectfully submit that the combination of Hrastar and Nordman is impermissible because such a combination requires either one or both of these references to change their principle of operation, which is impermissible (MPEP 2143.01). For example, Hrastar is directed to a CATV system while Nordman is directed to a wireless system. Either Hrastar's principle of operation would have to be changed so that it would be compatible with the wireless system of Nordman or Nordman's wireless system would have to be changed to be compatible with the CATV system of Hrastar. Neither is permissible.

In the Final Office Action (page 6) the Examiner's states his disagreement with the Appellants' position. In explaining his position the totality of the Examiner's position in rebuttal is that the combination of Hrastar and Nordman is permissible because both are "directed to routing data in a network". The Appellants respectfully submit that this is not a sufficient basis for combining the two references. Regardless of the words used to, broadly

speaking, characterize the references the fact remains that one skilled in the art would recognize that such a combination would indeed require one or both of the references to change their principle of operation. This is impermissible as noted above.

Accordingly, Appellants respectfully request that the members of the Board reverse the decision of the Examiner and allow independent claims, 1, 4, 12, 14, 16-18, 20, 27, 29, 31 and 32 and those claims that depend from them.

X. CONCLUSION:

For the reasons stated above, the Appellants respectfully request that the members of the Board reverse the Examiner's rejections and allow claims 1, 4, 12-18, 20 and 27-32.

APPELLANT'S BRIEF ON APPEAL
U.S. Application No.: 09/477,880
Atty. Docket: 129250-002093/US

XI. EVIDENCE APPENDIX

A terminal disclaimer has been filed in this application in accordance with 37 CFR 1.130(b) (copy attached as Appendix B) to overcome non-statutory double patenting rejections based on U.S. Patent No. 6,065,061 ('061 Patent) which is commonly owned by Lucent Technologies, Inc.

XII. RELATED PROCEEDINGS APPENDIX

None.

Respectfully submitted,

Capitol Patent & Trademark Law Firm, PLLC

By:


John E. Curtin, Reg. No. 37,602
P.O. Box 1995
Vienna, Virginia 22183
(703) 266-3330

APPENDIX A
CLAIMS APPENDIX

LISTING OF CLAIMS

1. A method for use in providing Internet service to an endpoint, the method comprising the steps of:

specifying routing information for an endpoint, wherein the routing information specifies primary and alternative Internet Protocol (IP) addresses; and

communicating data to the endpoint using the specified primary IP address except during periods of service interruption in which one of the alternative IP addresses are used by

establishing an IP tunnel to the endpoint using one of the alternative IP addresses.

2. (Cancelled)

3. (Cancelled)

4. A method for use in providing Internet service to an endpoint via a primary communications channel, the method comprising the steps of:

storing a routing table comprising an first Internet Protocol (IP) address associated with routing data to an endpoint via the primary communications

channel and a second IP address associated with routing data to the endpoint over a secondary communications channel; and

routing data to the endpoint as a function of the routing table such that during periods of service interruption on the primary communications channel data is routed to the endpoint via the secondary communications channel by establishing an IP tunnel to the endpoint using the second IP address,

whereas data is routed to the endpoint via the primary communications channel otherwise.

5. (Cancelled) .

6. (Cancelled)

7. A method of communicating over a cable television (CATV) access network having a cable modem termination system (CMTS) interface, the method comprising the steps of:

establishing a connection between the CMTS and a distant cable modem (CM) logically derived from an Internet Service Provider (ISP) subnetwork identifier of a Network Access Server (NAS) of the ISP;

storing routing information associated with the connection, the routing information including at least a CM identifier, an identity of an RF link on the CATV access network over which the CMTS forwards data packets to the CM,

and a tunnel interface identifier over which the CMTS forwards data packets to the CM over a different network; and

communicating data packets to the CM by translating the CM identifier to either the identified RF link or the tunnel interface identifier, wherein the tunnel is invoked in the event of a CATV interface failure.

8. The method of claim 7 wherein CATV access network provides one-way, or downstream, communications to the CM.

9. The method of claim 7 wherein CATV access network provides two-way communications to the CM.

10. The method of claim 7 wherein the CM identifier over the CATV network is logically derived from a CMTS subnetwork identifier of the CMTS.

11. (Cancelled)

12. Apparatus for use in providing Internet service to an endpoint, the apparatus comprising:

a device for (a) specifying routing information for an endpoint, wherein the routing information specifies primary and alternative Internet Protocol (IP) addresses, and (b) communicating data to the endpoint using the specified

primary IP address except during periods of service interruption in which one of the alternative IP addresses are used by (c) establishing an IP tunnel to the endpoint using an alternative IP address.

13. The apparatus of claim 12 wherein the device is a part of a cable television network (CATV).

14. Apparatus for use in providing Internet service to an endpoint, the apparatus comprising:

a device for routing data to the endpoint as a function of a routing table stored therein such that during periods of service interruption on a primary communications channel associated with a primary IP address data is routed to the endpoint via a secondary communications channel associated with a secondary IP address by establishing an IP tunnel to the endpoint using the secondary IP address, whereas data is routed to the endpoint via the primary communications channel otherwise.

15. The apparatus of claim 14 wherein the device is a part of a cable television network (CATV).

16. A system for use in providing Internet service, the system comprising:

a cable head-end router for providing Internet Protocol (IP) packets intended for subsequent conveyance over a primary channel; and

a cable modem data termination system responsive to the provided IP packets for routing the IP packets to an endpoint as a function of a routing table stored therein such that during periods of service interruption on the primary communications channel the IP packets are routed to the endpoint via a secondary communications channel associated with a secondary IP address by establishing an IP tunnel to the endpoint using the secondary IP address, whereas the IP packets are routed to the endpoint via the primary communications channel associated with a primary IP address otherwise.

17. A system for use in providing Internet service, the system comprising:

a cable head-end router for providing Internet Protocol (IP) packets that include a destination field having a value associated with a first IP address; and

a cable modem data termination system responsive to the provided IP packets for communicating the IP packets to the endpoint using the first IP address except during periods of service interruption in which an alternative IP address is used by establishing an IP tunnel to the endpoint using the alternative IP address.

18. A method for use in providing Internet service to an endpoint, the method comprising the steps of:

specifying routing information for an endpoint, wherein the routing information specifies primary and alternative Internet Protocol (IP) addresses; and

communicating data to the endpoint using the specified primary IP address over a first cable-based communications channel except during periods of service interruption in which one of the alternative IP addresses are used for communicating over a second non-cable-based communications channel by establishing an IP tunnel to the endpoint using one of the alternative IP addresses over the non-cable channel.

19. (Cancelled)

20. A method for use in providing Internet service to an endpoint via a primary communications channel, the method comprising the steps of:

storing a routing table comprising a first-Internet Protocol (IP) address associated with routing data to an endpoint via the primary communications channel and a second IP address associated with routing data to the endpoint over a secondary communications channel; and

routing data to the endpoint as a function of the routing table such that during periods of service interruption on the primary communications channel

data is routed to the endpoint via the secondary communications channel by establishing an IP tunnel to the endpoint using the second IP address, whereas data is routed to the endpoint via the primary communications channel otherwise and wherein the primary communications channel and the secondary communications channel are supported by physically different communications mediums.

21. (Cancelled).

22. A method of communicating over a cable television (CATV) access network having a cable modem termination system (CMTS) interface, the method comprising the steps of:

establishing a connection between the CMTS and a distant cable modem (CM) logically derived from an Internet Service Provider (ISP) subnetwork identifier of a Network Access Server (NAS) of the ISP;

storing routing information associated with the connection, the routing information including at least a CM identifier, an identity of an RF link on the CATV access network over which the CMTS forwards data packets to the CM, and a tunnel interface identifier over which the CMTS forwards data packets to the CM over a switched telephone network; and

communicating data packets to the CM by translating the CM identifier to either the identified RF link or the tunnel interface identifier, wherein the tunnel is invoked in the event of a CATV interface failure.

23. The method of claim 22 wherein CATV access network provides one-way, or downstream, communications to the CM.

24. The method of claim 22 wherein CATV access network provides two-way communications to the CM.

25. The method of claim 22 wherein the CM identifier over the CATV network is logically derived from a CMTS subnetwork identifier of the CMTS.

26. (Cancelled)

27. Apparatus for use in providing Internet service to an endpoint, the apparatus comprising:

a device for (a) specifying routing information for an endpoint, wherein the routing information specifies primary and alternative Internet Protocol (IP) addresses, and (b) communicating data to the endpoint using the specified primary IP address over a first cable-based channel except during periods of service interruption in which one of the alternative IP addresses are used for

communicating data over a second non-cable-based communications channel by (c) establishing an IP tunnel to the endpoint using an alternative IP address over the non-cable channel.

28. The apparatus of claim 27 wherein the device is a part of a cable television network (CATV).

29. Apparatus for use in providing Internet service to an endpoint, the apparatus comprising:

a device for routing data to the endpoint as a function of a routing table stored therein such that during periods of service interruption on a primary communications channel associated with a primary IP address data is routed to the endpoint via a secondary communications channel associated with a secondary IP address by establishing an IP tunnel to the endpoint using the secondary IP address, whereas data is routed to the endpoint via the primary communications channel otherwise and wherein the primary communications channel is physically different from the secondary communications channel.

30. The apparatus of claim 29 wherein the device is a part of a cable television network (CATV).

31. A system for use in providing Internet service, the system comprising:

a cable head-end router for providing Internet Protocol (IP) packets intended for subsequent conveyance over a primary cable channel; and

a cable modem data termination system responsive to the provided IP packets for routing the IP packets to an endpoint as a function of a routing table stored therein such that during periods of service interruption on the primary cable channel the IP packets are routed to the endpoint via a secondary non-cable communications channel associated with a secondary IP address by establishing an IP tunnel to the endpoint using the secondaary IP address, whereas the IP packets are routed to the endpoint via the primary cable channel associated with a primary IP address otherwise.

32. A system for use in providing Internet service, the system comprising:

a cable head-end router for providing Internet Protocol (IP) packets that include a destination field having a value associated with a first IP address; and

a cable modem data termination system responsive to the provided IP packets for communicating the IP packets to the endpoint over a cable-based communications channel using the first IP address except during periods of service interruption in which an alternative IP address is used for

APPELLANT'S BRIEF ON APPEAL
U.S. Application No.: 09/477,880
Atty. Docket: 129250-002093/US

communicating the IP packets to the endpoint over a non-cable-based communications channel by establishing an IP tunnel to the endpoint using an alternative IP address over the non-cable channel.

Appendix B

PTO/SB/26 (10-00)

Approved for use through 10/31/2002, OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING REJECTION OVER A PRIOR PATENT

Docket Number (Optional)
12250-002093/US/COA

In re Application of: Donald E. BLAHUT et al.

Application No. 09/477,880

Filed: January 5, 2000

For: INTERNET PROTOCOL BASED NETWORK ARCHITECTURE FOR CABLE TELEVISION ACCESS WITH SWITCHED FALBACK

Lucent Technologies Inc. (hereinafter "the Owner")

residing at
 a corporation of Delaware having a principal place of business at 600 MOUNTAIN Avenue,
Murry Hill, New Jersey 0794-0636,
 a university having an address of

represents that it is the true owner of the entire interest of U.S. patent Application No. 09/477,880, filed on January 5, 2000, for "Internet Protocol Based Network Architecture For Cable Television Access With Switched Fallback" (hereinafter "instant application") by virtue of and as evidenced by an Assignment recorded at the United States Patent and Trademark Office at Reel 9163, Frame(s) 0564.

The owner*, Lucent Technologies Inc., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior Patent No. 6,065,061. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

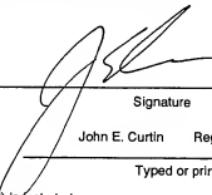
In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims cancelled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. The undersigned is an attorney of record.


Signature

09/14/2005

Date

John E. Curtin Reg. No. 37,602

Typed or printed name

Terminal disclaimer fee under 37 CFR 1.20(d) is included.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

*Certification under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner). Form PTO/SB/96 may be used for making this certification. See MPEP § 324.

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

Appendix B